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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37
U.S. Application Serial No. 09/583,736
Attorney Docket No. 042846-0312789



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Avner SHAFRIR, *et al.*
SERIAL NUMBER: 09/583,736 EXAMINER: Tadesse Hailu
FILING DATE: May 31, 2000 ART UNIT: 2173
FOR: COMMUNICATIONS LINK SYSTEM BASED ON USER INDICATOR

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Further to the Notice of Appeal filed on December 2, 2005 and the Notice of Panel Decision from Pre-Appeal Brief Review mailed January 3, 2006, Appellants respectfully submit an Appeal Brief pursuant to 37 C.F.R. § 41.37.

The Director is authorized to charge the \$500.00 fee for filing an Appeal Brief pursuant to 37 C.F.R. § 41.20(b)(2). The Director is further authorized to charge any additional fees that may be due, or credit any overpayment of same to Deposit Account No. 033975 (Ref. No. 042846-0312789).

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REQUIREMENTS OF 37 C.F.R. §41.37

I. 37 C.F.R. § 41.37(c)(1)(i) – REAL PARTY IN INTEREST

The real party in interest is International Business Machines Corporation.

II. 37 C.F.R. § 41.37(c)(1)(ii) – RELATED APPEALS AND INTERFERENCES

U.S. Patent Application Serial No. 09/583,734 (hereinafter “the ‘734 Application”), entitled “COLLABORATIVE APPLICATION WITH INDICATOR OF CONCURRENT USERS,” and filed May 31, 2000, is currently on Appeal before the Board of Patent Appeals and Interferences. An Appeal Brief in the ‘734 Application was filed February 1, 2006.

U.S. Patent Application Serial No. 09/580,904 (hereinafter “the ‘904 Application”), entitled “VISUAL INDICATOR OF NETWORK USER STATUS BASED ON USER INDICATOR,” and filed May 31, 2000, is currently on Appeal before the Board of Patent Appeals and Interferences. An Appeal Brief in the ‘904 Application is due February 28, 2006¹.

III. 37 C.F.R. § 41.37(c)(1)(iii) – STATUS OF CLAIMS

Pending: Claims 1-38 are pending.

Cancelled: No claims are cancelled.

Rejected: Claims 1-38 stand rejected.

Allowed: No claims have been allowed.

¹ It is noted that there is no explicit cross-reference to the ‘734 Application or the ‘904 Application appears in the instant Application. Applicants intend to amend the specification of the instant Application to include these cross-references upon entry of a favorable Decision by the Board of Patent Appeals and Interferences.

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On Appeal: The rejection of claims 1-38 under
35 U.S.C. § 103(a) is appealed.

IV. 37 C.F.R. § 41.37(c)(1)(iv) – STATUS OF AMENDMENTS

No Amendments have been filed subsequent to Final Rejection.

V. 37 C.F.R. § 41.37(c)(1)(v) – SUMMARY OF CLAIMED SUBJECT MATTER

Various instant messaging type applications now exist. One feature of some of these applications is that they can provide an indication of the status of network users (e.g., whether they are detected to be online). However, this user status feature is typically specific to that instant messaging application.

One aspect of the invention relates to a system for enabling a first network user to establish communication with one or more target network users (e.g., one or more people with whom the first network user may wish to communicate) using a user indicator that can be presented within two or more *types* of electronic documents using two or more *types* of applications. (Specification at page 6, lines 20-27). The user indicator acts as a link for establishing communications with network users. (*Id.*) A communication means is provided for activating the selected communication mode. (Specification at page 7, lines 12-24).

According to one aspect of the invention, the system enables communication by a plurality of modes. (*Id.*). A communication selection means provides *a status indication of a plurality of communication modes associated with the one or more user indicators* to enable selection of one of the communication modes based on the indicated status. (*Id.*).

One advantage of the invention is that the user status indicator can provide information regarding the status of a network user for two or more modes of communication. (Specification at page 17, lines 13-20). This facilitates selectively

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establishing communication with the network user based, for example, on a mode of communication that may be best at the time given the target network users status. A network user may select a user indicator (*e.g.*, using a conventional computer mouse or keyboard, voice activation) to establish communication with a target network user, using the user indicator. For example, after selecting a user indicator, a network user may be presented with a menu identifying one or more communication options. (Specification at page 16, line 22-page 17, line 20). The communication options may be presented in an order that indicates a network user's preference for receiving communications and/or present status. (*Id.*). The network user may then select one or more communication options and request that the communication option selected be established. (*Id.*). Communication modes, including, for example, chat, telephone, mobile phone, e-mail, facsimile, application sharing, whiteboard presentations or paging that may be initiated by the user selecting the user indicator. (Specification at page 5, lines 5-15).

VI. 37 C.F.R. § 41.37(c)(1)(vi) – GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (35 U.S.C. § 103).

Claims 1-38 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Mirabilis LTD, Quick Tour (“Quick Tour”), allegedly disclosed February 12, 1998, in view of ICQ Inc., ICQ Email Signature (“ICQ Email Signature”), allegedly disclosed May 2, 1999.

VII. 37 C.F.R. § 41.37(c)(1)(vii) – ARGUMENT

A. The rejection of Claims 1-38 under 35 U.S.C. § 103 is improper

The rejection of Claims 1-38 stand under 35 U.S.C. §103(a), as allegedly being unpatentable over Mirabilis LTD, Quick Tour (“Quick Tour”), allegedly disclosed February 12, 1998, in view of ICQ Inc., ICQ Email Signature (“ICQ Email Signature”)², allegedly disclosed May 2, 1999, is legally improper for at least the following reasons.

² Applicant believes that it can antedate one or more of the references and reserves the rights to do so should this be necessary. However, given the failure of the Examiner to establish a *prima facie* case of

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Claim 1 recites “user indicator presentation means for presenting one or more user indicators within the two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of applications and wherein each user indicator is associated with one or more target network users.”

Claim 1 further recites “communication selection means for providing a status indication of a plurality of communication modes associated with the one or more user indicators and enabling selection of at least one communication mode from the plurality of communication modes based on the status indication; and communication means for activating at least one communication mode associated with the user indicators presented in the two or more types of applications.”

The Examiner has failed to establish that either of these sets of features is present in the combination of references relied on.

1. The Examiner has failed to demonstrate that references disclose presenting one or more user indicators within two or more types of documents capable of being generated using two or more types of applications

The Examiner acknowledges that Quick Tour fails to disclose presenting one or more user indicators within the two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of applications. Final Office Action, p. 4. The Examiner erroneously relies on Email Signature to overcome this admitted deficiency. The Examiner has failed to establish that Email Signature disclose these features admittedly missing from the primary reference.

One of the legal errors committed by the Examiner is the failure to properly consider the specific claim language referred to above. The Examiner relies on Email Signature for allegedly enabling a user to include a signature block including a user's ICQ address in an email message, and allegedly providing a link to initiate a communication³.

obviousness, Applicant believes that this is unnecessary at this time and prefers to avoid the unnecessary costs associated therewith.

³ It appears that the communication is a chat communication. To the extent this may have

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Assuming, *arguendo*, that it would have been obvious to incorporate such a feature into the teachings of Quick Tour, the combination would still fail to teach or suggest certain claim elements. The Examiner does not even allege that the signature block in Email Signature provides an indication of the user's status. Thus, this aspect of the claim is not satisfied. Moreover, the Examiner fails to establish that the combination discloses enabling the presentation of at least one user indicator within *two or more types* of electronic documents, wherein the electronic documents are capable of being generated using *two or more types of applications*, as recited in independent claim 1.

Email Signature appears to describe an email signature that is viewable by two or more email applications. Two different email applications are not different *types of applications*. Rather, they are two instances of the same type of application. Nor are two emails two different *types of documents*. Rather, they are two of the *same type* of documents. An email application, which is one type of application, typically generates one type of electronic document – an email. Thus, the combination fails to satisfy at least these recitations of claim 1.

2. The references fail to disclose providing a status indication of a plurality of communication modes associated with the one or more user indicators

The rejection fails to establish that the references disclose “communication selection means for providing a status indication of a plurality of communication modes associated with the one or more user indicators and enabling selection of at least one communication mode from the plurality of communication modes based on the status indication,” wherein the one or more user indicators are presented “within two or more types of electronic documents.”

The Examiner erroneously alleges that Quick Tour discloses these features, citing pages 6-7. However, in Quick Tour the only communication mode that appears to be capable of being launched from the user indicator relates to a chat session. The Examiner appears to be erroneously relying on what is referred to as “Address Book” entries. See Quick Tour at bottom of p. 5 and top of p. 6; Fig.2 (ICQ Button Menu). The Address Book

inadvertently been characterized otherwise earlier in the prosecution, those statements are hereby corrected.

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may contain different types of contact information, but the Examiner points to nothing in the reference that establishes that this provides a user indicator relating to two or more communication modes and status information regarding those modes. Specifically, the rejection fails to establish that the reference disclosed that it enables a user to make a “selection of at least one communication mode from the plurality of communication modes based on the status indication.” Nor does the Examiner establish that the reference discloses “communication means for activating at least one communication mode associated with the user indicators presented in the two or more types of applications.”

Quick Tour appears to relate to chat communications based on a user’s ICQ ID number. Moreover, the status indication appears to relate to just one mode of communication.

Recitations relating to one or more of the sets of features argued above are also found in each of independent claims 8, 15, 22, 30-33, and 38. As such, these claims are allowable for the reasons provided above. Claims 2-7, 9-14, 16-21, 23-29, and 34-37 depend from and add features to one of the independent claims. Thus, these claims are allowable at least by virtue of their dependency

3. Claims 4, 12, 18, 26, 27

These claims recite “preference presentation means for presenting the network users preference for receiving communications”. The examiner erroneously alleges that the Quick Tour discloses these features. Quick Tour’s “preferences” relate to how a user is presented to other users. The Examiner does not establish that the reference discloses preferences regarding “receiving communications.”

4. Claims 5, 19, 20 and 27

Dependent claims 5, 19, and 27 recite presenting communication modes in an order established according to user preferences. The Examiner does not establish that the references disclose this.

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5. Claims 6-7, 13-14, 20-21, 28-29

Claim 6 recites “conference communication means for enabling the network users to establish conference communications.” The Examiner does not establish that the references disclose this. Claim 7 depends from Claim 6 and adds that the conference communication means enable the users to share an application. The Examiner does not establish that this combination of features is disclosed in the references.

6. Claim 9

Claim 9 recites “establishing communication between the network users and the one or more target network users upon selection of user indicators and activating the at least one communication mode associated with the selected user indicators.” The Examiner does not establish that the references disclose this. Claim 23 recites similar recitations.

7. Claims 34-37

Claims 34-37 are dependent claims that explicitly recite that the status indication of the plurality of communication modes includes a plurality of status indicators that correspond to the plurality of communication modes. The Examiner does not establish that the references disclose this. The Examiner erroneously alleges that this is satisfied by someone customizing an ICQ status to say “away from my desk, contact me by phone.”

VIII. 37 C.F.R. §41.37(c)(1)(viii) - CLAIMS APPENDIX

Appendix A: The pending claims (claims 1-38) are attached in Appendix A.

IX. 37 C.F.R. §41.37(c)(1)(ix) - EVIDENCE APPENDIX

Appendix B: (None)

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X. 37 C.F.R. §41.37(c)(1)(x) - RELATED PROCEEDINGS INDEX

Appendix C: (None)

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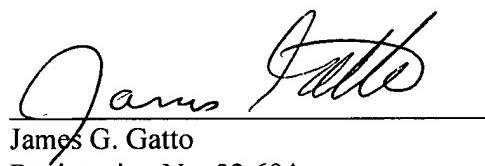
CONCLUSION

For at least the foregoing reasons, Appellant respectfully requests that the rejection of each of pending claims 1-38 under 35 U.S.C. §103(a) be reversed.

Date: February 2, 2006

Respectfully submitted,

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APPENDIX A

CLAIMS

1. (Previously presented) A system for enabling network users to establish at least one communication with one or more target network users, the one or more target network users being associated with a user indicator that is presented within two or more types of electronic documents, the system comprising:

user indicator presentation means for presenting one or more user indicators within the two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of applications and wherein each user indicator is associated with one or more target network users;

communication selection means for providing a status indication of a plurality of communication modes associated with the one or more user indicators and enabling selection of at least one communication mode from the plurality of communication modes based on the status indication; and

communication means for activating at least one communication mode associated with the user indicators presented in the two or more types of applications.

2. (Previously presented) The system of claim 1, further comprising communication preventing means for enabling the network users to prevent the target network users from establishing communications with the network users.

3. (Previously presented) The system of claim 2, further comprising urgent communication request means for enabling the one or more target network users to override the communication preventing means and to send an urgent communication request.

4. (Previously presented) The system of claim 1, further comprising preference presentation means for presenting the network users preference for receiving communications.

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5. (Previously presented) The system of claim 4, further comprising communication options presenting means for presenting communication options to network users in an order preferred by the corresponding target network users.

6. (Previously presented) The system of claim 1, further comprising conference communication means for enabling the network users to establish conference communications.

7. (Previously presented) The system of claim 6, wherein the conference communication means enable the network users to share at least one application.

8. (Previously presented) A method for enabling network users to establish at least one communication with one or more target network users, the one or more target network users being associated with a user indicator that is presented within two or more types of electronic documents, the method comprising the steps of:

generating the two or more types of electronic documents using two or more types of applications;

presenting one or more user indicators within the two or more types of electronic documents, wherein each user indicator is associated with the one or more target network users;

providing a status indication of a plurality of communication modes associated with the one or more user indicators;

selecting at least one communication mode from the plurality of communication modes based on the status indication; and

providing a communication link to the one or more target network users associated with the one or more user indicators presented in the two or more types of applications.

9. (Previously presented) The method of claim 8, further comprising the step of establishing communication between the network users and the one or more target

network users upon selection of user indicators and activating the at least one communication mode associated with the selected user indicators.

10. (Previously presented) The method of claim 8, further comprising the step of enabling the network users to prevent the one or more target network users from establishing communication with the network users based on the system users request for privacy.

11. (Previously presented) The method of claim 10, further comprising the step of establishing an urgent communication request that overrides the network users request for privacy.

12. (Previously presented) The method of claim 8, further comprising the step of presenting one or more communication option preferences that correspond to the network users preference for receiving communications.

13. (Previously presented) The method of claim 9, wherein the step of establishing communication comprises establishing a conference communication.

14. (Previously presented) The method of claim 13, wherein the step of establishing conference communication comprises sharing at least one application among network users.

15. (Previously presented) A system for enabling network users to establish at least one communication with one or more target network users, the one or more target network users being associated with a user indicator that is presented within two or more types of electronic documents, the system comprising:

a user indicator presentation module that presents one or more user indicators within the two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of

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applications and wherein each user indicator is associated with one or more target network users;

 a status determination module that determines a status of a plurality of communication modes associated with the one or more user indicators;

 a communication selection module that enables the network users to select at least one communication mode from a plurality of communication modes based on the status determination; and

 a communication module that enables the network users to activate at least one communication mode associated with user indicators presented in the two or more types of applications.

16. (Previously presented) The system of claim 15, further comprising a communication preventing module that enables the network users to prevent the target network users from establishing communications with the network users.

17. (Previously presented) The system of claim 16, further comprising an urgent communication request module that enables the one or more target network users to override the communication preventing module and to send an urgent communication request.

18. (Previously presented) The system of claim 17, further comprising a communication options preference presentation module that presents the network users preference for receiving communications.

19. (Previously presented) The system of claim 18, further comprising a communication options presenting module that presents communication options to network users in an order preferred by the corresponding target network users.

20. (Previously presented) The system of claim 19, further comprising a conference communication module that enables the network users to establish conference communications.

21. (Previously presented) The system of claim 20, wherein the conference communication module enables the network users to share at least one application.

22. (Previously presented) A processor readable medium having processor readable code embodied therein for enabling at least one network user to establish at least one communication with one or more target network users, the one or more target network users being associated with a user indicator that is presented within two or more types of electronic documents, the medium comprising:

processor readable code that causes a processor to enable the one or more network users to generate the two or more types of electronic documents using two or more types of applications;

processor readable code that causes the processor to identify the one or more user indicators within the two or more types of electronic documents;

processor readable code that causes the processor to determine a status of a plurality of communication modes associated with the one or more user indicators;

processor readable code that causes the processor to select at least one communication mode from the plurality of communication modes based on the status determination; and

processor readable code that causes the processor to provide at least one communication link to one or more communication options associated with the one or more user indicators presented in the two or more types of applications.

23. (Previously presented) The medium of claim 22, further comprising processor readable code that causes the processor to establish communication between the network users and the one or more target network users upon selection of user indicators and activating the at least one communication mode associated with the selected user indicators.

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24. (Previously presented) The medium of claim 22, further comprising processor readable code that causes the processor to prevent the one or more target network users from establishing a communication with network users.

25. (Previously presented) The medium of claim 24, further comprising processor readable code that causes the processor to enable the one or more target network users to send an urgent communication request.

26. (Previously presented) The medium of claim 22, further comprising processor readable code that causes the processor to enable the one or more network users to identify a preference for receiving at least one communication.

27. (Previously presented) The medium of claim 26, further comprising processor readable code that causes the processor to present the at least one communication mode in an order preferred by the at least one network user.

28. (Previously presented) The medium of claim 22, further comprising processor readable code that causes the processor to enable the one or more network users to establish conference communications.

29. (Previously presented) The medium of claim 28, wherein the processor readable code enables the one or more network users to share at least one application upon establishing conference communications.

30. (Previously presented) A system for enabling network users to establish at least one communication with one or more target network users, the one or more target network users being associated with a user indicator that is presented within two or more types of electronic documents, the system comprising:

a user indicator presentation module that presents one or more user indicators within the two or more types of electronic document, wherein the electronic document

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types are capable of being generated using two or more types of applications and wherein each user indicator is associated with one or more target network users;

a status determination module associated with a first application type that determines a status of a plurality of communication modes associated with the one or more user indicators;

a communication selection module associated with a second application type that enables the network users to select at least one communication mode from a plurality of communication modes based on the status determination, wherein the first application type and the second application type are different application types; and

a communication module that enables the network users to activate at least one communication mode associated with user indicators presented in the two or more types of applications.

31. (Previously presented) A system for enabling network users to establish at least one communication with one or more target network users, the one or more target network users being associated with a user indicator that is presented within two or more types of electronic documents, the system comprising:

a user indicator presentation module that presents one or more user indicators within the two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of non-HTML applications, and wherein each user indicator is associated with one or more target network users;

a status determination module that determines a status of a plurality of communication modes associated with the one or more user indicators;

a communication selection module that enables the network users to select at least one communication mode from a plurality of communication modes based on the status determination; and

a communication module that enables the network users to activate at least one communication mode associated with user indicators presented in the two or more types of applications.

32. (Previously presented) A communication system, comprising:

a user indicator presentation module that presents one or more user indicators within two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of applications, wherein each user indicator is associated with one or more target network users, and wherein the one or more target network users comprises all network users capable of accessing the communication system;

a status determination module associated with a first application type that determines a status of a plurality of communication modes associated with the one or more user indicators;

a communication selection module associated with a second application type that enables network users to select at least one communication mode from a plurality of communication modes based on the status determination, wherein the first application type and the second application type are different application types; and

a communication module that enables the network users to activate at least one communication mode associated with user indicators presented in the two or more types of applications.

33. (Previously presented) A communication system, comprising:

a user indicator presentation module that presents one or more user indicators within two or more types of electronic documents, wherein the electronic document types are capable of being generated using two or more types of applications, wherein each user indicator is associated with one or more target network users, and wherein the one or more target network users comprises all network users capable of accessing the communication system;

a status determination module that determines a status of a plurality of communication modes associated with the one or more user indicators;

a communication selection module that enables network users to select at least one communication mode from a plurality of communication modes based on the status determination; and

a communication module that enables the network users to activate at least one communication mode associated with user indicators presented in the two or more types of applications.

34. (Previously presented) The system of claim 1, wherein the status indication of the plurality of communication modes comprises a plurality of status indicators that correspond to the plurality of communication modes.

35. (Previously presented) The system of claim 34, wherein activating at least one communication mode includes selecting at least one of the plurality of status indicators to initiate activation.

36. (Previously presented) The method of claim 8, wherein the status indication of the plurality of communication modes comprises a plurality of status indicators that correspond to the plurality of communication modes.

37. (Previously presented) The method of claim 36, wherein selecting at least one communication mode includes selecting at least one of the plurality of status indicators.

38. (Previously presented) A system for enabling network users to establish at least one communication with one or more of a plurality of target network users, the one or more of the plurality target network users being associated with one of a plurality of user indicators that are presented within two or more types of electronic documents generated by two or more types of applications, the system comprising:

documents generated by the two or more applications, wherein each document includes at least two user depictions associated with at least two network users;

an identification determining module that references the user directory to access at least two user indicators that correspond to the at least two network users associated with the at least two user depictions included in the documents;

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a user indicator presentation module that presents the at least two user indicators within the documents, wherein the user indicator presentation module is capable of presenting the at least two user indicators within the two or more types of electronic documents that are capable of being generated using the two or more types of applications;

a status determination module that determines statuses of a plurality of communication modes associated with the at least two user indicators;

a communication selection module that enables the network users to select at least one communication mode from the plurality of communication modes based on the status determination; and

a communication module that enables the network users to activate at least one communication mode associated with one or more of the at least two user indicators presented in the documents.

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APPENDIX B
EVIDENCE APPENDIX

NONE

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APPENDIX C

RELATED PROCEEDINGS INDEX

NONE